

AMENDED IN ASSEMBLY JUNE 4, 2003

AMENDED IN SENATE MAY 13, 2003

SENATE BILL

No. 134

Introduced by Senator Figueroa

February 5, 2003

An act to amend Section 3097 of, and to add Section 3259.5 to, the Civil Code, relating to private works of improvement.

LEGISLATIVE COUNSEL'S DIGEST

SB 134, as amended, Figueroa. Private works of improvement: liens.

Existing law governs public and private works of improvement. Among other things, these provisions require that a claimant, as defined, provide to a specified person a preliminary 20-day notice prior to the recording of a claim of lien, the filing of a stop notice, or the recovery of a payment bond, in a required manner. These provisions also require that the owner of a work of improvement sign and verify any notice of completion or notice of cessation and that the notice be recorded in the office of the county recorder of the county in which the site is located.

This bill would require that certain statements be included in a preliminary 20-day notice in boldface type in regard to notices of completion or cessation, as specified.

This bill would also require the owner of a private work of improvement to notify, by registered or certified mail, or by first class mail, evidenced by a certificate of mailing, the original contractor, and any claimant who has provided a preliminary 20-day notice prior to the recording of a mechanic's lien or stop notice, that a notice of completion

or notice of cessation has been recorded within 10 days of recordation of that notice of completion or notice of cessation. The bill would provide that failure to give notice shall extend the period of time in which the contractor or claimant may file a mechanic's lien or stop notice to 90 days, as specified, and would provide that this extension would be the sole liability incurred for failure to give notice. The bill would define an owner for these purposes, but would exclude from that definition a person who occupies the real property as a personal residence, as specified, among others.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3097 of the Civil Code is amended to
2 read:

3 3097. "Preliminary 20-day notice (private work)" means a
4 written notice from a claimant that is given prior to the recording
5 of a mechanic's lien, prior to the filing of a stop notice, and prior
6 to asserting a claim against a payment bond, and is required to be
7 given under the following circumstances:

8 (a) Except one under direct contract with the owner or one
9 performing actual labor for wages as described in subdivision (a)
10 of Section 3089, or a person or entity to whom a portion of a
11 laborer's compensation is paid as described in subdivision (b) of
12 Section 3089, every person who furnishes labor, service,
13 equipment, or material for which a lien or payment bond otherwise
14 can be claimed under this title, or for which a notice to withhold
15 can otherwise be given under this title, shall, as a necessary
16 prerequisite to the validity of any claim of lien, payment bond, and
17 of a notice to withhold, cause to be given to the owner or reputed
18 owner, to the original contractor, or reputed contractor, and to the
19 construction lender, if any, or to the reputed construction lender,
20 if any, a written preliminary notice as prescribed by this section.

21 (b) Except the contractor, or one performing actual labor for
22 wages as described in subdivision (a) of Section 3089, or a person
23 or entity to whom a portion of a laborer's compensation is paid as
24 described in subdivision (b) of Section 3089, all persons who have
25 a direct contract with the owner and who furnish labor, service,
26 equipment, or material for which a lien or payment bond otherwise



1 can be claimed under this title, or for which a notice to withhold
2 can otherwise be given under this title, shall, as a necessary
3 prerequisite to the validity of any claim of lien, claim on a payment
4 bond, and of a notice to withhold, cause to be given to the
5 construction lender, if any, or to the reputed construction lender,
6 if any, a written preliminary notice as prescribed by this section.

7 (c) The preliminary notice referred to in subdivisions (a) and
8 (b) shall contain the following information:

9 (1) A general description of the labor, service, equipment, or
10 materials furnished, or to be furnished, and an estimate of the total
11 price thereof.

12 (2) The name and address of the person furnishing that labor,
13 service, equipment, or materials.

14 (3) The name of the person who contracted for purchase of that
15 labor, service, equipment, or materials.

16 (4) A description of the jobsite sufficient for identification.

17 (5) The following statement in boldface type:

18
19 **NOTICE TO PROPERTY OWNER**
20

21 If bills are not paid in full for the labor, services, equipment, or
22 materials furnished or to be furnished, a mechanic's lien leading
23 to the loss, through court foreclosure proceedings, of all or part of
24 your property being so improved may be placed against the
25 property even though you have paid your contractor in full. You
26 may wish to protect yourself against this consequence by (1)
27 requiring your contractor to furnish a signed release by the person
28 or firm giving you this notice before making payment to your
29 contractor, or (2) any other method or device that is appropriate
30 under the circumstances. Other than residential homeowners,
31 private project owners must notify the original contractor and any
32 lien claimant that a notice of completion or notice of cessation has
33 been recorded within 10 days of its recordation. Notice shall be by
34 registered mail, certified mail, or first class mail, evidenced by a
35 certificate of mailing. Failure to notify will extend the deadlines
36 to record a lien.

37 (6) If the notice is given by a subcontractor who has failed to
38 pay all compensation due to his or her laborers on the job, the
39 notice shall also contain the identity and address of any laborer and
40 any express trust fund to whom employer payments are due.

1 If an invoice for materials or certified payroll contains the
2 information required by this section, a copy of the invoice,
3 transmitted in the manner prescribed by this section shall be
4 sufficient notice.

5 A certificated architect, registered engineer, or licensed land
6 surveyor who has furnished services for the design of the work of
7 improvement and who gives a preliminary notice as provided in
8 this section not later than 20 days after the work of improvement
9 has commenced shall be deemed to have complied with
10 subdivisions (a) and (b) with respect to architectural, engineering,
11 or surveying services furnished, or to be furnished.

12 (d) The preliminary notice referred to in subdivisions (a) and
13 (b) shall be given not later than 20 days after the claimant has first
14 furnished labor, service, equipment, or materials to the jobsite. If
15 labor, service, equipment, or materials have been furnished to a
16 jobsite by a claimant who did not give a preliminary notice, that
17 claimant shall not be precluded from giving a preliminary notice
18 at any time thereafter. The claimant shall, however, be entitled to
19 record a lien, file a stop notice, and assert a claim against a payment
20 bond only for labor, service, equipment, or material furnished
21 within 20 days prior to the service of the preliminary notice, and
22 at any time thereafter.

23 (e) Any agreement made or entered into by an owner, whereby
24 the owner agrees to waive the rights or privileges conferred upon
25 the owner by this section shall be void and of no effect.

26 (f) The notice required under this section may be served as
27 follows:

28 (1) If the person to be notified resides in this state, by delivering
29 the notice personally, or by leaving it at his or her address of
30 residence or place of business with some person in charge, or by
31 first-class registered or certified mail, postage prepaid, addressed
32 to the person to whom notice is to be given at his or her residence
33 or place of business address or at the address shown by the building
34 permit on file with the authority issuing a building permit for the
35 work, or at an address recorded pursuant to subdivision (j).

36 (2) If the person to be notified does not reside in this state, by
37 any method enumerated in paragraph (1) of this subdivision. If the
38 person cannot be served by any of these methods, then notice may
39 be given by first-class certified or registered mail, addressed to the
40 construction lender or to the original contractor.



1 (3) If service is made by first-class certified or registered mail,
2 service is complete at the time of the deposit of that registered or
3 certified mail.

4 (g) A person required by this section to give notice to the
5 owner, to an original contractor, and to a person to whom a notice
6 to withhold may be given, need give only one notice to the owner,
7 to the original contractor, and to the person to whom a notice to
8 withhold may be given with respect to all materials, services,
9 labor, or equipment he or she furnishes for a work of improvement,
10 that means the entire structure or scheme of improvements as a
11 whole, unless the same is furnished under contracts with more than
12 one subcontractor, in which event, the notice requirements shall be
13 met with respect to materials, services, labor, or equipment
14 furnished to each contractor.

15 If a notice contains a general description required by
16 subdivision (a) or (b) of the materials, services, labor, or
17 equipment furnished to the date of notice, it is not defective
18 because, after that date, the person giving notice furnishes
19 materials, services, labor, or equipment not within the scope of this
20 general description.

21 (h) If the contract price to be paid to any subcontractor on a
22 particular work of improvement exceeds four hundred dollars
23 (\$400), the failure of that contractor, licensed under Chapter 9
24 (commencing with Section 7000) of Division 3 of the Business and
25 Professions Code, to give the notice provided for in this section,
26 constitutes grounds for disciplinary action by the Registrar of
27 Contractors.

28 If the notice is required to contain the information set forth in
29 paragraph (6) of subdivision (c), a failure to give the notice,
30 including that information, that results in the filing of a lien, claim
31 on a payment bond, or the delivery of a stop notice by the express
32 trust fund to which the obligation is owing constitutes grounds for
33 disciplinary action by the Registrar of Contractors against the
34 subcontractor if the amount due the trust fund is not paid.

35 (i) Every city, county, city and county, or other governmental
36 authority issuing building permits shall, in its application form for
37 a building permit, provide space and a designation for the
38 applicant to enter the name, branch, designation, if any, and
39 address of the construction lender and shall keep the information

1 on file open for public inspection during the regular business hours
2 of the authority.

3 If there is no known construction lender, that fact shall be noted
4 in the designated space. Any failure to indicate the name and
5 address of the construction lender on the application, however,
6 shall not relieve any person from the obligation to give to the
7 construction lender the notice required by this section.

8 (j) A mortgage, deed of trust, or other instrument securing a
9 loan, any of the proceeds of which may be used for the purpose of
10 constructing improvements on real property, shall bear the
11 designation "Construction Trust Deed" prominently on its face
12 and shall state all of the following: (1) the name and address of the
13 lender, and the name and address of the owner of the real property
14 described in the instrument, and (2) a legal description of the real
15 property that secures the loan and, if known, the street address of
16 the property. The failure to be so designated or to state any of the
17 information required by this subdivision shall not affect the
18 validity of the mortgage, deed of trust, or other instrument.

19 Failure to provide this information on this instrument when
20 recorded shall not relieve persons required to give preliminary
21 notice under this section from that duty.

22 The county recorder of the county in which the instrument is
23 recorded shall indicate in the general index of the official records
24 of the county that the instrument secures a construction loan.

25 (k) Every contractor and subcontractor employing laborers as
26 described in subdivision (a) of Section 3089 who has failed to pay
27 those laborers their full compensation when it became due,
28 including any employer payments described in Section 1773.1 of
29 the Labor Code and regulations adopted thereunder shall, without
30 regard to whether the work was performed on a public or private
31 work, cause to be given to those laborers, their bargaining
32 representatives, if any, and to the construction lender, if any, or to
33 the reputed construction lender, if any, not later than the date the
34 compensation became delinquent, a written notice containing all
35 of the following:

36 (1) The name of the owner and the contractor.

37 (2) A description of the jobsite sufficient for identification.

38 (3) The identity and address of any express trust fund described
39 in Section 3111 to which employer payments are due.

1 (4) The total number of straight time and overtime hours on
2 each job.

3 (5) The amount then past due and owing.

4 Failure to give this notice shall constitute grounds for
5 disciplinary action by the Registrar of Contractors.

6 (l) Every written contract entered into between a property
7 owner and an original contractor shall provide space for the owner
8 to enter his or her name, residence address, and place of business
9 if any. The original contractor shall make available the name and
10 address of residence of the owner to any person seeking to serve
11 the notice specified in subdivision (c).

12 (m) Every written contract entered into between a property
13 owner and an original contractor, except home improvement
14 contracts and swimming pool contracts subject to Article 10
15 (commencing with Section 7150) of Chapter 9 of Division 3 of the
16 Business and Professions Code, shall provide space for the owner
17 to enter the name and address of the construction lender or lenders.
18 The original contractor shall make available the name and address
19 of the construction lender or lenders to any person seeking to serve
20 the notice specified in subdivision (c). Every contract entered into
21 between an original contractor and subcontractor, and between
22 subcontractors, shall provide a space for the name and address of
23 the owner, original contractor, and any construction lender.

24 (n) If one or more construction loans are obtained after
25 commencement of construction, the property owner shall provide
26 the name and address of the construction lender or lenders to each
27 person who has given the property owner the notice specified in
28 subdivision (c).

29 (o) (1) Each person who has served a preliminary 20-day
30 notice pursuant to subdivision (f) may file the preliminary 20-day
31 notice with the county recorder in the county in which any portion
32 of the property is located. A preliminary 20-day notice filed
33 pursuant to this section shall contain all of the following:

34 (A) The name and address of the person furnishing the labor,
35 service, equipment, or materials.

36 (B) The name of the person who contracted for purchase of the
37 labor, services, equipment, or materials.

38 (C) The common street address of the jobsite.

39 (2) Upon the acceptance for recording of a notice of completion
40 or notice of cessation the county recorder shall mail to those

1 persons who have filed a preliminary 20-day notice, notification
2 that a notice of completion or notice of cessation has been recorded
3 on the property, and shall affix the date that the notice of
4 completion or notice of cessation was recorded with the county
5 recorder.

6 (3) The failure of the county recorder to mail the notification
7 to the person who filed a preliminary 20-day notice, or the failure
8 of those persons to receive the notification or to receive complete
9 notification, shall not affect the period within which a claim of lien
10 is required to be recorded. However, the county recorder shall
11 make a good faith effort to mail notification to those persons who
12 have filed the preliminary 20-day notice under this section and to
13 do so within five days after the recording of a notice of completion
14 or notice of cessation.

15 (4) This new function of the county recorder shall not become
16 operative until July 1, 1988. The county recorder may cause to be
17 destroyed all documents filed pursuant to this section, two years
18 after the date of filing.

19 (5) The preliminary 20-day notice that a person may file
20 pursuant to this subdivision is for the limited purpose of
21 facilitating the mailing of notice by the county recorder of
22 recorded notices of completion and notices of cessation. The
23 notice that is filed is not a recordable document and shall not be
24 entered into those official records of the county which by law
25 impart constructive notice. Notwithstanding any other provision
26 of law, the index maintained by the recorder of filed preliminary
27 20-day notices shall be separate and distinct from those indexes
28 maintained by the county recorder of those official records of the
29 county which by law impart constructive notice. The filing of a
30 preliminary 20-day notice with the county recorder does not give
31 rise to any actual or constructive notice with respect to any party
32 of the existence or contents of a filed preliminary 20-day notice nor
33 to any duty of inquiry on the part of any party as to the existence
34 or contents of that notice.

35 (p) (1) The change made to the statement described in
36 subdivision (c) by Chapter 974 of the Statutes of 1994 shall have
37 no effect upon the validity of any notice that otherwise meets the
38 requirements of this section. The failure to provide, pursuant to
39 Chapter 974 of the Statutes of 1994, a written preliminary notice
40 to a subcontractor with whom the claimant has contracted shall not

1 affect the validity of any preliminary notice provided pursuant to
2 this section.

3 (2) (A) The inclusion of the language added to paragraph (5)
4 of subdivision (c) by Chapter 795 of the Statutes of 1999, shall not
5 affect the validity of any preliminary notice given on or after
6 January 1, 2000, and prior to the operative date of the amendments
7 to this section enacted at the 2000 portion of the 1999–2000
8 Regular Session, that otherwise meets the requirements of that
9 subdivision.

10 (B) A preliminary notice given on or after January 1, 2000, and
11 prior to the operative date of the amendments to this section
12 enacted at the 2000 portion of the 1999–2000 Regular Session,
13 shall not be invalid because of the failure to include the language
14 added to paragraph (5) of subdivision (c) by Chapter 795 of the
15 Statutes of 1999, if the notice otherwise complies with that
16 subdivision.

17 (C) The failure to provide an affidavit form or notice of rights,
18 or both, pursuant to the requirements of Chapter 795 of the Statutes
19 of 1999, shall not affect the validity of any preliminary notice
20 pursuant to this section.

21 SEC. 2. Section 3259.5 is added to the Civil Code, to read:

22 3259.5. (a) The owner of a private work of improvement
23 shall notify the original contractor, and any claimant other than the
24 original contractor who has provided a preliminary 20-day notice
25 in accordance with Section 3097, that a notice of completion or
26 notice of cessation has been recorded. The notice shall be sent
27 within 10 days after recordation of the notice of completion or
28 notice of cessation. Notification shall be sent by registered or
29 certified mail, or by first-class mail, evidenced by a certificate of
30 mailing. Failure to give notice to a contractor or claimant within
31 10 days of recording the notice of completion or notice of cessation
32 shall extend the period of time in which that contractor or claimant
33 may file a mechanic's lien or stop notice to 90 days beyond the date
34 that a notice of completion or notice of cessation has been
35 recorded. The sole liability for failing to give notice shall be the
36 extension of the period of time in which that contractor or claimant
37 may file a mechanic's lien or stop notice.

38 (b) For purposes of this section, "owner" means a person who
39 has an interest in real property, or the person's successor in interest
40 on the date a notice of *completion or notice of* cessation from labor

1 is filed for record, who causes a building, improvement, or
2 structure, to be constructed, altered, or repaired on the property. If
3 the property is owned by two or more persons as joint tenants or
4 tenants in common, any one or more of the cotenants may be
5 deemed to be the “owner” within the meaning of this section.
6 However, “owner” does not include a person who occupies the
7 real property as a personal residence and the dwelling contains not
8 more than four residential units, nor does it include a person who
9 has a security interest in the property or obtains an interest
10 pursuant to a transfer described in subdivision (b), (c), or (d) of
11 Section 1102.2.

